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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 07/02/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/727,124

Applicant(s)

VINES, VICTOR L.

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-12 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. In the Final Office Action, Claims 1-8 and 10-20 were indicated as allowed. However, in light of a new interpretation of the Setra Model GCT-225 Pressure Transducers dated January 26, 2000 and Marino et al (5,189,907) references, the indicated allowed claims are now rejected.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

The specification as originally filed does not provide antecedent basis for “a cavity of a vacuum extraction device for use with fetal extraction”.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 and 13-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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In claims 1, lines 7 and 9, the phrase "cavity" is unclear. As filed claim 1 recited the pressure detection device being capable of being coupled to tubing. Claims 2-5 recite limitations of the tubing. As amended Claim 1 no longer recites the tubing but **a cavity**. The applicant does not disclose that the pressure detection device may be adapted to couple to a cavity.

In claims 13, line 9, the phrase "cavity" is vague and unclear.

Claims 1-5 and 13-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The original specification does not provide support for a **cavity**, thus the claims are vague and indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by Setra Model GCT-225 Pressure Transducers Specification dated January 26, 2000.

Setra discloses a device [for recording a pressure produced by a vacuum extraction device, the vacuum extraction device enable to couple to a fetus via a suction device], comprising: a cable (Electrical Termination 06) that is attachable (via the cable ends) [to a monitor, the monitor being enabled to record a detected pressure], where a pressure detection device (the variable capacitance sensor) coupled to the cable, the pressure detection device adapted to couple (via the Pressure Fitting) [to a cavity of a vacuum extraction device for use

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with fetal extraction], such that the pressure detection device is enable to detect a pressure [in the cavity], and where the pressure device further adapted to communicate a detected vacuum pressure [to the monitor] via the cable; [the vacuum extraction device being adapted to produce a vacuum therein via hand-actuation, and the vacuum extraction device comprising a suction device being attachable to a scalp portion of a fetus]. Furthermore, elements 46, 47 in fig. 1 of Marino (5,189,907) appear to anticipate claims 1 and 13. The portion of the claim in brackets above indicate intended use recitations of the pressure detection device. The statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over Setra and Marino which is capable of being used as claimed if one desires to do so. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Allowable Subject Matter

5. Claims 6-12 are allowed.

The following is an examiner's statement of reasons for allowance: None of the prior art of record, alone or in combination, discloses all of the limitations of claim 6 including, a method of recording a pressure in a vacuum extraction device where placing the vacuum extraction device on a fetus, where the space between the fetus and the vacuum extraction device define a pressure area in the vacuum extraction device, where the vacuum extraction device adapted to couple to a fetus via a suction device; and where detecting the vacuum pressure in the pressure area.

Conclusion

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).


The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn *Vn*
June 28, 2004



JULIAN W. WOO
PRIMARY EXAMINER